

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

POWAY UNIFIED SCHOOL DISTRICT,

Plaintiff and Respondent,

v.

LINDSEY STEWART,

Defendant and Appellant.

D048901

(Super. Ct. No. GIC863832)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Affirmed.

The issue in this case is whether the court erred by entering judgment for the Poway Unified School District (the District) on its motion to enforce a sanctions order it obtained against Lindsey Stewart in an administrative proceeding. We find no error and affirm the judgment.

BACKGROUND

Stewart's son was a special education student in the District, and since 1999 Stewart has filed at least 10 unsuccessful administrative actions on his behalf against the

District. On August 11, 2005, the California Special Education Hearing Office (SEHO) granted in part the District's motion in one of the actions for sanctions against Stewart for her failure to notify it and SEHO in a timely manner of her withdrawal of her request for a hearing. The order explained that a hearing was scheduled for April 27, 2005, at 9:30 a.m., and the District appeared but Stewart did not appear. Stewart had sent letters by facsimile to the District and the hearing officer at 6:30 a.m. the morning of the hearing "that indicated she would not be attending the hearing because of a medical condition and was 'closing the case without prejudice.' "

On August 31, SEHO issued an order granting the District \$3,091.25 in sanctions and costs against Stewart. The order noted the expenses would not have been incurred had Stewart given adequate notice she would not attend the hearing. The order also noted there "was no specific objection by Ms. Stewart to the amount alleged, other than she did not feel she should have to pay it." The order directed Stewart to pay the sanctions by September 15, 2006.

Stewart refused to pay the District, and it sought enforcement through the Office of Administrative Hearings, Special Education Division (OAH). In a January 2006 order, however, the OAH denied the request on the grounds the "SEHO sanctions order is enforceable in court, and the District has not established why a further order from OAH is necessary or warranted."¹

¹ In April 2006 the OAH ordered Stewart to pay the District \$1,302 in sanctions in another action for her bad faith in sending it by facsimile 651 pages of "largely irrelevant material."

In a March 2006 letter to Stewart, the District demanded payment. Stewart responded in a letter, "I will not be sending a check in the amount of \$3,091.00 for undeserved sanctions." (Boldface omitted.)

In April 2006 the District filed a petition in the superior court for enforcement of the sanctions order. Stewart responded by removing the case to federal court on the allegation of federal question jurisdiction. After Stewart filed numerous pleadings, the federal court remanded the action to state court, rejecting the argument the District's action pertained to the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.). The court explained the District's action "does not seek to address Stewart's child's IEP [individualized education program], but simply seeks enforcement of an order for \$3,091.25 in sanctions ordered by the administrative hearing officer."

After a hearing on May 25 and June 6, 2006, the court entered a judgment granting the District's petition and ordering Stewart to pay the District \$3,091.25 by June 16, 2006. Pursuant to the District's request, the court ordered Stewart to appear at a debtor's examination on October 20, 2006. She failed to appear.²

DISCUSSION

Stewart contends the court "erred in stating she had jurisdiction over the Procedural Safeguards of constitutional provision of the Individuals with Disabilities Education Act, in limited jurisdiction v. unlimited jurisdiction in accepting this case." As

² We grant the District's unopposed motion to augment the record on appeal dated November 9, 2006.

the federal court found, however, this action does not pertain to the Individuals with Disabilities Education Act. Rather, the superior court proceeding was limited to the enforcement of SEHO's sanctions order. Government Code section 11455.30, subdivision (a) authorizes an administrative officer to "order a party . . . to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad faith actions or tactics that are frivolous or solely intended to cause unnecessary delay as defined in Section 128.5 of the Code of Civil Procedure." Under subdivision (b) of Government Code section 11455.30, a sanctions order is enforceable "in the same manner as a money judgment."

Stewart also asserts the court "erred in making prejudicial statements not based in facts of the Administrative Record." Specifically, Stewart faults the court for stating, "I note that the . . . hearing officer expressly found that those legal fees would not have been incurred if you had timely notified the District and the hearing officer of your withdrawal of a request for a hearing." The assertion lacks merit, as the August 31, 2005 SEHO order states: "The District provided a sworn declaration setting out the amount it incurred on April 25, 26, and 27 in legal fees in preparation for the hearing. These costs would not have been incurred if Ms. Stewart had notified it and [SEHO] of her withdrawal of her request for a hearing in a timely manner."

Additionally, Stewart claims the attorney fees the District incurred were unnecessary for various reasons, there was no evidence of her bad faith, and the court erred by enforcing the sanctions order without evidence pertaining to the attorney's billable hours. Stewart, however, did not appeal the sanctions award. Under Education

Code section 56505, subdivision (k), she could have brought a superior court action "within 90 days of receipt of the hearing decision." Issues pertaining to the substantive merits of the sanctions order were moot when the hearing here occurred, and the only issue before the court was enforcement of the award. The court explained the limited purpose of the hearing to Stewart and that it could not retry the sanctions issue. On the record, Stewart stated she understood the court could not retry the matter.

Stewart also asserts the District's counsel "provided the court with false statements." The record, however, belies that notion. Further, the pleadings Stewart filed in federal court in an attempt to remove jurisdiction of this case are not germane to this appeal.

Stewart's claim that the court "erred in not reading one page of [her] documents" is also without merit. To the contrary, the reporter's transcript shows the court ensured that Stewart could file whatever documents she pleased, and continued the hearing so she could file additional documents. The court also explained on the record at the continued hearing that "I have had an opportunity, Miss Stewart, to review all of the filings that you

made subsequent to our last hearing. I carefully reviewed those as well as re-reviewed all of the pleadings in the case."³

DISPOSITION

The judgment is affirmed. The District is entitled to costs on appeal.

McCONNELL, P. J.

WE CONCUR:

BENKE, J.

McINTYRE, J.

³ Stewart represents herself on appeal and her appellate briefs are largely unintelligible. "When a litigant is appearing in propria persona he [or she] is entitled to the same, but no greater, consideration than other litigants and attorneys [citations]." (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 638.) We have nonetheless carefully reviewed Stewart's briefs and have found no other potential issues.